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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

S.T., et. al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E071197

(Super.Ct.No. J-273303)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Christopher B. Marshall, Judge. Petition denied.

Law Offices of Vincent W. Davis & Associates and Stephanie M. Davis for Petitioner, S.T.

Law Offices of Arthur J. LaCilento and Arthur J. LaCilento for Petitioner, G.R.

No appearance for Respondent.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County Counsel, for Real Party in Interest.

Petitioners S.T. (Mother) and G.R. (Father) are the parents of A.R., who was four months old at the time of removal and 14 months old on the date of the challenged orders. By separate petition, each parent seeks extraordinary relief from the court's orders of August 30, 2018, sustaining the petition filed under Section 300 of the Welfare and Institutions Code,[1] denying reunification services, and setting a hearing under section 366.26 to consider terminating parental rights and setting a permanent plan for A.R. The parents argue the jurisdictional findings are not supported by substantial evidence and the court abused its discretion when it denied reunification services. For the reasons described *post*, we deny both petitions.

FACTS AND PROCEDURE

Detention—October 2017

On Wednesday, October 11, 2017, Mother contacted A.R.'s pediatrician because A.R. was acting fussy and had trouble sleeping. An appointment was not available. After a second phone call to the pediatrician at the end of that day, Mother and the maternal grandmother took A.R. to the emergency room at Pomona Valley Medical Center. Father joined them at the hospital after he got off of work at 6:00 p.m. A.R.

[1] Section references are to the Welfare and Institutions Code except where otherwise indicated.

presented with pain in her legs and a swollen left thigh. Early in the morning on October 12, A.R. was transferred to Loma Linda University Medical Center (LLUMC). A.R. had fractures to her right radius (wrist), right ulna (wrist), left femur (thigh) and right first metatarsal (foot), along with bruising to her chest, side, and arm. The injuries were consistent with child abuse. The parents could not explain how A.R. had been injured. Both denied abusing A.R. Mother stayed at home and cared for A.R. most of the time while Father worked as a police officer. Father and the maternal grandparents provided occasional care for A.R.

On October 17, 2017, San Bernardino County Children and Family Services (CFS) filed a section 300 petition alleging under subdivision (a) (serious physical harm) and subdivision (e) (severe physical abuse), that A.R. sustained multiple injuries consistent with nonaccidental trauma; the injuries occurred while A.R. was in the care of her parents; and the parents are unwilling or unable to provide an explanation for her injuries. CFS alleged under section 300, subdivision (b) (failure to protect), that A.R. sustained multiple serious injuries while in the care of each of the parents, the parent knew or should have known of the abuse but failed to protect A.R., and this places her at substantial risk of further abuse.

At the detention hearing held on October 18, 2017, minor's counsel requested no visits between A.R. and Father. However, the court found no detriment and ordered supervised visits for both parents while A.R. was in the hospital. Upon her release to a maternal relative, supervised visits were to take place at the CFS office twice a week.

Jurisdiction and Disposition—November 2017 to August 2018

In the jurisdiction and disposition report filed November 6, 2017, CFS recommended no reunification services to either parent. CFS recommended setting a section 366.26 hearing to consider adoption as A.R.'s permanent plan.

Mother had two other children, ages five and eight, from a previous marriage living in the home along with A.R. and Father. These two children were placed with their own father during this dependency. The children told a social worker that they had not witnessed any violence or hitting in the home of Mother and Father, but one of the children had seen Mother yell at A.R., telling her to stop crying. Both children stated that Mother and Father are nice to them, and that they do not see Father very much. Mother and the father of the two older children were going through a divorce. During an incident of domestic violence in 2015, Mother called police. The responding police officer who arrested Mother's then-husband would later become her boyfriend and A.R.'s father. Mother's ex-husband stated he had not observed any marks or bruises on their children, and that Mother does not use spankings to discipline the children.

Father denied abusing or neglecting A.R. and stated he did not know how she was injured. Father stated he works a lot of overtime as a police officer, in addition to his usual three 12-hour shifts a week. Mother called Father Saturday night, October 7, to inform him A.R. was not sleeping, was fussy, and wanted to be held. Father stated that is not unusual as A.R. has never slept well. Mother called him again Sunday night with the same concerns. Father was watching A.R. on Monday or Tuesday and realized she was

not sleeping. He called the pediatrician and was advised to get a teething gel for her. Father was at work on Wednesday October 11 when Mother called to say there was something wrong with A.R.'s leg and she appeared to be in pain. Father met Mother and A.R. at the emergency room.

Mother denied abusing or neglecting A.R. Mother described that A.R. spent time with Mother's parents on Saturday and that night had trouble sleeping. On Sunday, A.R. was "normal" during the day, but again had trouble sleeping that night. A.R. had never been a good sleeper. On Tuesday, October 10, Mother noticed for the first time that A.R. was in discomfort, would cry when held, and was no longer rolling over. That day Father contacted the pediatrician and was told A.R. was probably teething. On Wednesday October 11, Mother and the maternal grandmother noticed A.R. would wince or scream in pain when Mother would lift A.R.'s legs, and A.R. did not want to stand. A.R.'s legs were swollen. Mother called the pediatrician twice that day, and the second time the doctor told her to take A.R. to the emergency room. Father met her there after his shift ended around 6:00 p.m. Mother did not know how A.R. was injured, but believed it was an accident, however it happened. Her parents had A.R. on Saturday at a pizza restaurant and reported hearing a "pop" as they passed the child between them, but A.R. did not cry and behaved normally. Mother reported she took care of A.R. most of the time, and that her parents babysat about once a week.

The maternal grandparents reported that they were actively involved in their grandchildren's lives and babysat them often. The "pop" sound at the restaurant could

have come from anywhere, as the restaurant was noisy, and A.R. did not cry or scream. They also reported that A.R. seemed "fine" on Monday October 9. The grandparents did not have any concerns about the family or their home environment.

A.R. was tested for a bone abnormality called Osteogenesis imperfecta, to see if that would explain the multiple fractures, but the results were negative.

The contested jurisdiction and disposition hearing was continued a number of times,[2] and the court finally heard testimony from eight witnesses over 10 court days in August 2018. The court also had before it numerous medical reports and documents that were entered into evidence.

The Police Report

Officer McCullough was the investigating officer. He interviewed the relevant witnesses and filed his report[3] on December 13, 2017. Mother stated A.R. first showed signs of discomfort on Saturday October 7, after being picked up from the maternal grandparents. A.R. was fussy and did not fall sleep until about 2:30 a.m., but she seemed better on Sunday. Mother stated Father had worked Saturday and Sunday night, the 7th and 8th. On Sunday night, A.R. was fussy and did not fall asleep until about 2:30 a.m.,

[2] During this interval, CFS filed regular Additional Information to the Court reports, on December 19, 2017, January 25 and 31, February 15, March 9, May 10 and 14, and July 25, 2018. These reports updated the court on the investigation, described visitation and the parents' participation in services, and provided supporting documents.

[3] The police report includes information also contained in the detention and jurisdiction/disposition reports, and in trial testimony. Duplicative information is not described, except where the police report contains information that differs from or conflicts with other sources of evidence.

but did not seem to be in pain. On Monday night A.R. was the most fussy. She cried and would not sleep. Mother was up with A.R. until 4:30 a.m. until Father took over so Mother could sleep. The other children were also asleep upstairs, so Father took A.R. downstairs and eventually got her to go to sleep. Father left A.R. asleep in the stroller downstairs because he did not want her to wake up. On Tuesday the parents agreed that A.R. seemed uncomfortable during diaper changes and was not acting like herself. Mother said A.R. was in pain in the afternoon and did not turn or look around when Mother held her. On Wednesday, A.R. winced in pain when having her diaper changed, and stopped rolling over after having learned to roll over the previous week. Mother's other two children were at their father's house over the weekend of October 7 and 8. The eight-year-old half sibling carried A.R. around the house at times, but only under Mother's close supervision. The children are never left alone with A.R. Mother did not know how A.R. was injured and did not suspect her parents or Father.

On the advice of his attorney, Father declined to provide a statement to Officer McCullough.

The maternal grandmother told Officer McCullough that Mother had told her A.R. had been acting fussy the last few days, since she had come home from the grandparent's home, and was keeping Mother up at night. She stated the only way A.R. could have been injured in her care was Saturday night at a pizza restaurant when she handed A.R. over to the maternal grandfather. One of A.R.'s legs hit the corner of the granite table. The grandmother did not know if A.R. hit her wrist. The maternal grandfather told the

grandmother that he heard a "popping" noise in A.R.'s leg. A.R. started crying. The grandmother took A.R. back and was able to comfort her and stop her from crying. A.R. did not show any signs of discomfort in her legs or arms later that evening when they went home and placed A.R. in a jumper. A.R. did cry that evening, but it seemed like a normal baby cry. The grandmother did not think Mother or Father had abused A.R., and said she and the grandfather had nothing to do with the injuries.

The maternal grandfather stated he and grandmother had taken A.R. to a local airport earlier on Saturday, October 7, and that the grandmother had fallen on her "butt" while going down some stairs and holding A.R. He did not see the fall, but it was his understanding that it was not a bad fall and that A.R. was not affected, did not cry, and did not show any signs of injury.[4] At the pizza restaurant, the grandfather heard a loud "pop" in A.R.'s leg as he took her from the grandmother, but he did not think A.R.'s leg hit the table. The grandfather did not think Mother or Father had abused A.R. He said he and the grandmother had nothing to do with the injuries.

Dr. Siccama at LLUMC expressed her concern about how Father acted at the hospital. Father seemed "very shut off and not too concerned" about A.R. When Dr. Siccama asked him if he or Mother had abused A.R., he responded: "Well, I know [Mother] didn't do this." Dr. Siccama was concerned that Father did not exclude himself from having caused A.R.'s injuries.

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[4] Mother stated she saw the grandmother fall at the airport with A.R., but it was nothing serious and it did not injure A.R. in any way.

Officer McCullough concluded, based on his investigation, that A.R. had suffered obvious abuse that occurred between October 7 and 10, 2017. The only people in control of A.R. during this time were Mother, Father, and the maternal grandparents. He was unable at that point to determine who committed the abuse.

On February 13, 2018, Detective Teague filed a supplemental report based on an interview that day with Mother's good friend, Ms. Harriman. Harriman had known Mother for 22 years, since grade school. On Monday, October 9, 2017, Mother brought A.R. to Harriman's home to babysit while Mother volunteered at her children's school. Mother came into the home for a few minutes to talk and was holding A.R. in her lap. They then walked out to Mother's car. Harriman believes she may have held A.R. while Mother removed a stroller from her car. Mother placed A.R. in the stroller. Harriman and her husband walked with their daughter and A.R. to their daughter's dance practice. Mother picked up A.R. from the dance practice a little more than an hour later, removed her from the stroller, and placed her in a car seat. At that time, A.R. "was a happy baby with an ear to ear smile." Harriman told Officer McCullough that the relationship between Mother and Father was "horrible" and that they fought constantly because Father did not want to have kids. Mother told Harriman that Father had wanted her to have an abortion. Mother also told Harriman that Father would call her a "cunt" and, on one occasion while A.R. was in her bassinet, Father said, "your mom is a cunt." Mother told Harriman that she had found pornographic photos, photos of ex-girlfriends, and texts from other women on Father's cell phone. Prior to discovering her own pregnancy,

Mother found a pregnancy test that was not hers in Father's trash can. Mother told Harriman that Father had a short temper. Mother did not discuss with Harriman how A.R. was injured or who injured her.

The Trial Testimony

Dr. Melissa Siccama testified on August 1, 2, and 3, 2018. Dr. Siccama graduated from medical school in 2004, did her residency in pediatrics, worked as a general pediatrician, and in 2016 began a fellowship in pediatric forensics at LLUMC. She currently works at LLUMC and at the Children's Assessment Center (CAC) in San Bernardino. At CAC, Dr. Siccama examines and assesses children regarding child abuse. Dr. Siccama has worked with the LLUMC child abuse team since 2014, and has testified in seven or eight court cases. Dr. Siccama estimated she had conducted about 400 or 500 child abuse exams. Dr. Siccama examined A.R. at LLUMC on October 13, 2017, along with board certified pediatrician, Dr. Amy Young. At that time, they had access to A.R.'s medical records from LLUMC. Dr. Siccama saw A.R. for a follow-up visit at CAC on November 3, and was supervised by board certified pediatrician, Dr. Egge. At that time, they also had access to A.R.'s medical records from Pomona Valley Medical Center. These doctors consulted with pediatric specialists in the fields of genetics, orthopedics, and radiology, as well as the LLUMC emergency department and the primary team that took care of A.R. Dr. Siccama also spoke with Mother and Father. The physicians prepared a report reflecting the October 13 examination, another report to

reflect the CAC examination on November 3, and a third follow-up or summary report on January 18, 2018.

After examining A.R. and her X-rays, Dr. Siccama concluded that A.R. had several bruises and four fractured bones. A.R. had bruises on the left and right sides of her chest, on her left side between the abdomen and back, and on her left forearm. A.R. had a fracture in her lower left thigh bone, two bones in her right wrist, and in a bone of her right foot. In Dr. Siccama's opinion, each of these injuries was "most consistent with child abuse." Specifically, the left thigh had a transverse fracture, which was the result of a "bending-type mechanism, a forceful violent bend of the upper leg, the thigh bone." The two wrist fractures were also caused by "a violent bending force that we would not see in normal care of an infant." Dr. Siccama stated that "foot fractures in infants are very rare and are often highly specific for child abuse. So that would be a squeezing, bending-type mechanism as well." Regarding the bruises, she stated that "those injuries are most consistent with the squeezing of the chest or squeezing of the extremities, grab marks." When asked whether the age of the child played a role in the assessment of the bruises and fractures as child abuse, Dr. Siccama explained: "She was not quite four months old. She's not moving. Any time an infant under six months has bruising, especially multiple areas of bruising, multiple fractures, we are highly concerned for physical abuse." Such injuries, especially the thigh injury, would be painful to the child, such as with diaper changes or movement of the legs, picking up the child, lying her down, or changing her position. The injuries were so painful that A.R. was given

morphine for the pain. Dr. Siccama opined that the injuries had to have been caused by more than one act. This is because the fractures are on three different extremities (arm, thigh and foot) and the bruises are in different places. Tests indicated that A.R. did not suffer from any type of bone disease, such as osteogenesis imperfecta, that would have caused the fractures.

On cross-examination, Dr. Siccama testified that the medical notes from Pomona Valley Medical Center mentioned no bruises on A.R., and did not mention a fractured foot. However, the X-ray taken at Pomona Valley Medical Center did show a fractured foot. The skeletal survey done at LLUMC on October 12, 2017, showed that the four fractures "were all acute. There was soft tissue swelling. There was no signs of healing, which puts the fractures under a week." Based on this information and on the "history" of the case, Dr. Siccama opined that A.R. had been injured on October 10 or 11.

On August 3, 2018, Father called Dr. Nadine Williams as an expert witness. Dr. Williams is an orthopedic oncologist and pediatric oncologist at LLUMC. She graduated from medical school in 2007 and was licensed as an orthopedist in 2012. She had testified in court on two prior occasions. Dr. Williams is not part of the pediatric forensics unit, but does consult on child abuse cases that come into the emergency room when she is on call. Dr. Williams was on call when A.R. came to LLUMC and consulted with the resident who saw A.R. when she came to the emergency room. Dr. Williams examined A.R. and noted the thigh and wrist fractures, but did not notice the foot fracture. Dr. Williams saw A.R.'s entire body, but did not see any bruising. Dr.

Williams saw A.R. again at some point before she was discharged on October 18, and a third time during a follow-up evaluation in January 2018. Based on her review of the medical records and personal examinations of A.R., Dr. Williams agreed that A.R. had not suffered any permanent deformities from the fractures.

CFS called Mother to testify on August 7, 2018. Mother testified that she and Father had lived together, along with her two other children, since a few months before A.R. was born. Mother stayed home to take care of A.R. Until the dependency, A.R. had never spent a night away from Mother. A.R. did not have any medical problems, other than being put on a nebulizer for a fever. From birth, A.R. had always been a "difficult sleeper." Mother followed her attorney's advice to invoke her Fifth Amendment right not to answer when asked whether at the time of detention A.R. was still waking up every two hours. Mother invoked this right at various other points during her testimony, including when asked how A.R. got hurt. Mother testified that she was used to the routine of getting up every couple of hours at night to feed, burp, and change A.R., and then go back to sleep. Father also helped to take care of A.R., but Mother was usually up with A.R. at night because she was nursing A.R. Father had regular working hours. When Mother needed help with the children and Father was not available, she would ask her parents, but really no one else. When Father was working at night, Mother would sometimes call him to tell him A.R. was not sleeping. Father worked a lot of overtime, but when he was at home, both day and night, he would help with A.R. On Monday, October 9, 2017, Father got off work about 4:00 a.m. and was off work the rest of that

day and Tuesday, October 10. Father helped take care of A.R. on Monday and Tuesday, including Monday night into Tuesday. Father returned to work on Wednesday, October 11 from 6:00 a.m. to 6:00 p.m. Father called in sick on Thursday October 12 because they were at the hospital with A.R. Mother's parents took care of A.R. on Saturday, October 7, from 2:30 until about 9:00 p.m. Mother dropped off A.R. with her friend Ms. Harriman on Monday, October 9 at about 10:00 a.m. for about an hour. A.R. seemed fine both before and after being with Harriman. Mother had a family history of bone breaks or fractures. Mother had broken her arm three times, her brother had broken a leg when he was age two, and her father had broken a couple of bones when he was young. Father's family also had a history of broken bones.

Father called Dr. Thomas Grogan to testify on August 13, 2018. Dr. Grogan had been a physician for 37 years. He worked in pediatric orthopedics and had reviewed orthopedic injuries in children under the age of one "hundreds" of times. He was qualified as an expert witness in the causation of traumatic orthopedic injuries in children and had testified over 100 times. He had also taught seminars on the subject of orthopedic manifestations of nonaccidental trauma. Dr. Grogan had done scientific research on the amount of energy necessary to cause bone fractures. Dr. Grogan had reviewed A.R.'s medical and CFS reports and reviewed the images and skeletal surveys. Dr. Grogan testified that A.R.'s fractures would heal completely with no deformity. A.R.'s injuries likely happened within five to seven days prior to the X-rays taken on October 11 and 12, 2017. The injury to A.R.'s thigh could have happened when someone

lifted her by that leg, or manipulated her legs too roughly playing the bicycle game. Even a child could have caused this injury. The foot injury was most likely caused by squeezing the foot. Dr. Grogan testified that in his opinion the four injuries did not take place "simultaneously" because they were on different limbs. Rather, the injuries were the result of multiple events, "especially if we are talking about one person doing it."

On August 16, 2018, Father called the investigating police officer, Sergeant McCullough, to testify. The officer wrote in his report that he was unable to determine who committed the abuse to A.R. The status of the report was "suspended" because the officer did not have enough evidence to send the case on to the District Attorney for prosecution. The officer concluded that someone abused A.R. between October 7 and 10, 2017, but could not determine who. The officer interviewed Mother and the maternal grandparents, but not Father. Father's counsel would not allow Father to be interviewed. The officer did not believe A.R.'s many injuries could have been caused by the grandparents handing the baby from one person to another, even with the reported popping noise. However, he could not rule out the grandparents as suspects because the evidence indicated A.R. was injured sometime between October 7 and 10, and the grandparents were alone with A.R. for several hours on October 7. Mother told the officer that on October 7 the grandmother had fallen into a sitting position on the ground while holding A.R., but that A.R. did not hit the ground and the grandmother kept hold of A.R. The officer had no information that A.R. left her grandparents' home on October 7 with any injuries. Officer McCullough reviewed the report of Detective Teague, who

interviewed Harriman on February 13, 2018. Based on that report, Officer McCullough was aware that Harriman babysat A.R. on Monday, October 9, but was not aware that A.R. had any injuries on October 9, either before or after being with Harriman. Mother told Officer McCullough that A.R. was the most fussy on Monday night, October 9, and that Father was with A.R. downstairs alone while Mother was upstairs, beginning about 4:30 a.m. for about two hours. Father left A.R. downstairs, apparently asleep. Mother had been awake for a very long time, so Father took A.R. downstairs, pushed her around in a stroller and showed her a nightlight to try to get her to fall asleep. Mother told him that sometimes she would cry because A.R. was up so much at night. Officer McCullough understood that A.R. was cared for only by Mother, Father, and the maternal grandparents. The officer got the impression that Father was "middle of the road" regarding how much he helped with A.R. He stated that Mother emphasized how much overtime Father worked and that he needed to rest between shifts. Mother told the officer that October 10 was the first day she noticed A.R. was in obvious pain, aside from teething or her usual fussiness. Mother told the officer that she did not know how A.R. was injured—she did not think her parents or Father had hurt A.R. Officer McCullough witnessed the forensic interview of A.R.'s two half siblings. Neither girl said they witnessed any domestic violence in the home, and neither girl was afraid of Father.

Also on August 16, 2018, CFS called Father as a witness. Father mostly invoked his Fifth Amendment right when prompted by counsel.

On August 21, 2018, and again on August 28 and 29, CFS called the social worker as a witness. She had been on this case since late October 2017. The social worker mostly answered questions about what was in the jurisdiction and disposition report. The social worker stated that for placement purposes the grandparents might not be protective of A.R. because they did not believe either parent, especially Mother, would hurt A.R. The social worker agreed that A.R. appeared to enjoy visits with each of the parents, and that the parents were participating in counseling.

On August 27 and 28, 2018, the court heard testimony from the psychologist who conducted the psychological evaluation of Father over three sessions in December 2017. The purpose of the evaluation was to determine whether Father could benefit from reunification services. Based on several tests, including a mental status examination and a cognitive function test, clinical interviews to determine Father's veracity, and a review of the case file up to December 2017, the psychologist concluded that Father could benefit from reunification services. The psychologist did not change this conclusion, or her assessment of father's veracity, after being informed that Father had yelled at A.R., "your mother is a cunt," or finding out he had kept pornographic videos and messages from other women on his cell phone, or that Mother had found a pregnancy test from another women in Father's trash can.

On August 30, 2018, the court heard extensive argument from each of the parties. As to jurisdiction, the court found each of the allegations under section 300, subdivisions (a), (b) and (e) to be true, and found the allegation under subdivision (e) to be true by

clear and convincing evidence. The court further found that, under section 361.5, subdivision (b)(5), it would not be in the best interest of A.R. to offer reunification services to Mother and Father. The court set the section 366.26 permanency planning hearing for December 14, 2018,[5] with adoption to be considered.

This writ proceeding followed.

DISCUSSION

1. *The Jurisdictional Findings Under Section 300, Subdivision (e), Are Supported by Substantial Evidence*.

Father challenges the finding of jurisdiction as to him under each of the subdivisions of section 300, that is, subdivisions (a), (b) and (e). Mother challenges the jurisdiction findings as to her only under section 300, subdivisions (a) and (e). Because the court's determination not to provide reunification services under section 361.5, subdivision (b)(5), is based on its finding under section 300, subdivision (e), by clear and convincing evidence as to both parents, we will first address section 300, subdivision (e) (severe physical abuse).

" 'On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.]

[5] By order filed November 15, 2018, this court stayed the section 366.26 hearing pending determination of the petition for extraordinary writ filed in this case.

Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]' " (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 84.) "We do not reweigh the evidence, nor do we consider matters of credibility." (*In re E.H.* (2003) 108 Cal.App.4th 659, 669 (*E.H.*).)

A child can come under the jurisdiction of the juvenile court under section 300, subdivision (e), where "[t]he child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, 'severe physical abuse' means . . . . . more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, . . ."

Here, A.R. was four months old when she was injured, and thus was under the age of five years. Further, the medical evidence demonstrates that A.R. suffered severe physical abuse, as defined in the statute. The record demonstrates severe physical abuse even by the more stringent "clear and convincing evidence" standard that section 361.5, subdivision (b)(5), requires as a basis to deny reunification services. This is because A.R. suffered four separate bone fractures on three different limbs—the right wrist (two fractures), left thigh, and right foot. The court heard testimony from Dr. Siccama that the injuries had to have been caused by more than one act, again because the fractures are on three different extremities and the bruises are in different places. The court heard similar testimony from Dr. Grogan, Father's witness. In addition, the court itself was entitled to

conclude from the placement of the four bone fractures that they were caused by more than one act of physical abuse, again because they were on three different limbs.

The evidence also supports the court's conclusion, by clear and convincing evidence, that A.R. was abused "by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child." This is because the only people who cared for A.R. were Mother, Father, and the maternal grandparents. In *E.H.*, *supra*, 108 Cal.App.4th 659, the court held under section 300, subdivision (e), that because the child under age five suffered severe physical abuse and was never out of the custody of either the mother or father, the parents either inflicted the injuries themselves or reasonably should have known who inflicted the child's injuries. (*Id.* at p. 669-670.) The child welfare agency in that case correctly employed a " 'res ipsa loquitur' " type of argument, using the above facts to support the jurisdictional finding under section 300, subdivision (e). The court agreed. (See *E.H.*, *supra*, 108 Cal.App.4th at pp. 669-670.) Here, A.R. is a child under age five who suffered severe physical abuse; Mother was with A.R. "95 percent of the time," Father provided some relief when he was not working, and the maternal grandparents took care of A.R. about once a week. Therefore, under the reasoning of *E.H.*, it is reasonable to infer that either Mother or Father inflicted A.R.'s injuries, or each of them knew or reasonably should have known who did.

In addition, the evidence shows that A.R., who was normally a very fussy child and regularly had trouble sleeping at night, first exhibited signs of actual pain on

Tuesday, October 10. This was after A.R. had been in the exclusive care of Mother or Father since being picked up from Mother's friend Harriman on Monday morning. The evidence is clear that A.R. was fussy, but did not exhibit pain after being cared for by the maternal grandparents on Saturday, or after being cared for by Harriman on Monday morning. A.R. first exhibited pain on Tuesday, after being cared for by Mother most of Monday night, and by Father for a couple of hours very early on Tuesday morning. Dr. Siccama testified that the fractures would have been so painful that moving A.R. in any way, including picking her up, putting her down, or changing her diaper, would cause a pain response. A.R was in so much pain when brought to the hospital that she was given morphine. Again, the testimony is clear that A.R. did not appear to be in this much pain until Tuesday, which would exclude the grandparents and mother's friend as the abusers. Thus, under the reasoning of *E.H.*, and the evidence before the court on the timing of A.R.'s pain in relation to who provided care for her, substantial evidence supports the court's conclusion by clear and convincing evidence that one or both of the parents caused the severe physical injuries to A.R., and both reasonably should have known who caused the injuries.

2. Section 300, Subdivisions (a) and (b)

In addition to their challenges to the court's jurisdictional findings under section 300, subdivision (e), Father also challenges the findings under both subdivisions (a) and (b), while Mother challenges only the findings under subdivision (a). Given this court's decision to uphold the jurisdictional findings under subdivision (e) by clear and

convincing evidence, we decline to review the other jurisdictional rulings as a matter of judicial economy.

As a general rule, " '[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)[6]

However, there are several exceptions to these principles: "Courts may exercise their 'discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) "could have other consequences for [the appellant], beyond jurisdiction" [citation].' " (*In re D.P.* (2015) 237 Cal.App.4th 911, 917.) Here, the court's finding under section 300, subdivision (e), by clear and convincing evidence is the basis for the dispositional orders denying reunification services, and we see no additional prejudice that can attach to either parent from the

[6] This rule is sometimes described as a matter of mootness. (E.g., *In re I.A.* (2011) 201 Cal.App.4th 1484, 1489-1490.) It could also be viewed as a matter of standing. (See Code Civ. Proc., § 902 [appellant must be aggrieved].)

findings under section 300, subdivisions (a) or (b). Therefore, we decline to review the findings under subdivisions (a) and (b).

3. The Court Did Not Abuse Its Discretion When It Denied Reunification Services.

Both parents argue the juvenile court erred when it denied them reunification services under section 361.5, subdivision (b)(5). We disagree, based on the court's true finding, by clear and convincing evidence, under Section 300, subdivision (e).

"We affirm an order denying reunification services if the order is supported by substantial evidence." (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839.) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

Section 361.5, subdivision (a), generally mandates that reunification services are to be provided whenever a child is removed from the parent's custody. However, subdivision (b) of section 361.5 sets forth the circumstances under which reunification services may be bypassed. "Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.)

Section 361.5, subdivision (b)(5), provides: "(b) Reunification services need not be provided to a parent or guardian described in this subdivision when a court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian."[7]

As explained *ante*, we affirm the court's jurisdictional ruling that A.R. comes within its jurisdiction under section 300, subdivision (e). The court made the finding by clear and convincing evidence, as required to use the bypass provisions set forth in section 361.5, subdivision (b)(5). As is also explained *ante*, we affirm that substantial evidence supports the court's finding under section 300, subdivision (e), by clear and convincing evidence, rather than just the preponderance of the evidence required for jurisdiction. Therefore, "reunification services need not be provided" to either parent.

As both parents point out, section 361.5, subdivision (c)(3), provides in addition, "the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. . . ." Our affirmance of the true finding under section 300,

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[7] "[B]ecause of the conduct of that parent" in section 361.5, subdivision (b)(5), applies not only to the actual abuser, whose identity is officially undetermined in this case, but also to "the parent who, knowing the actual abuser, knows or reasonably should have known that the other parent was physically mistreating the child, . . ." (*In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1731-1732.)

subdivision (e), is enough by itself to defeat Mother's and Father's challenges to the disposition. This is because, once the court makes the subdivision (e) finding by clear and convincing evidence, "*reunification services need not be provided*." (§361.5, sub. (b).) Section 361.5, subdivision (c)(3), is an additional hurdle for the parents to overcome at disposition and an additional restriction on the court, should the court be inclined to consider granting reunification services despite the bypass provisions of subdivision (b)(5). (See *In re A.M.* (2013) 217 Cal.App.4th 1067, 1076.) It would also be a ground for the child protective agency to challenge in this court an order granting reunification services. (See *In re Z.G.*(2016) 5 Cal.App.5th 705 & *In re G.L.* (2014) 222 Cal.App.4th 1153.) Section 361.5, subdivision (c)(3), however, is not a ground for challenging on appeal the trial court's order denying reunification services under subdivision (b)(5). This is because, even if we were to find that the court abused its discretion in failing to find under section 361.5, subdivision (c)(3), either that reunification services are likely to prevent reabuse or detriment because the child is closely and positively attached to the parents, the plain language of subdivision (b)(5) still provides that "*reunification services need not be provided*." Thus, given our conclusion that A.R. was brought within the jurisdiction of the court under section 300, subdivision (e), the court did not err when it denied the parents reunification services under section 361.5, subdivision (b)(5).

DISPOSITION

The petitions for extraordinary writ are denied. The stay of the section 366.26 hearing is lifted.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

FIELDS
J.

RAPHAEL
J.